

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (ABA) No.349/2021

Gajanan Ghode V State of Maharashtra

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri B. Dafle, Adv for applicant.
 Shri A.M. Kadukar, APP for State.

CORAM : S.M. MODAK, J.
DATE : 08th JULY, 2021.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard learned Advocate Shri Dafle for the applicant and learned APP Shri Kadukar for the State.

3. The present applicant is working as a Sub Post Master at Mahagon Post. One Yogesh Nile was also working in the Postal Department. He is suspended employee. The present applicant allowed the said Nile to stay in Post Office in the intervening night of 28-03-2020 and 29-03-2020. The said Shri Nile by mis-using the facilities of the post office has booked the money orders in the name of 460 persons fictitiously and tried to misappropriate Rs.23 lakhs belonging to the Post Department. But the present applicant received a text message of the said Nile on 29-03-2020 at 9.58 am. On getting this knowledge, the present applicant reached to the Superintendent of Post, Yavatmal on 30-03-2020, and requested him to cancel those electronic money orders.

4. A preliminary enquiry was conducted and the complaint is lodged with Mahagaon Police Station, Yavtamal on 23-02-2021 and an offence under Section 409 of the Indian Penal Code is registered against the present applicant.

5. He has approached the Court of Additional Sessions Judge, Pusad, for Anticipatory Bail. But, he was not successful.

6. It is submitted on his behalf that though money orders are booked in the name of 460 persons in fact the money is not transferred to those persons due to timely intervention of this applicant. According to him, even he has deposited Rs.1,15,000/- towards the commission which the Post Department owes if at all genuine/fictitious money orders are booked. According to him, the only mistake he has committed is to allow his friend Shri Nile to stay the post office on the intervening night.

7. According to the learned APP, during preliminary enquiry the statements of this applicant were recorded on more than one occasion. Every time he has changed his version. My attention is brought towards written complaint lodged by Post Inspector to Mahagaon Police Station. It is true that the applicant has given different explanations to the postal officials as to what happened in between the said Shri Nile and him.

8. During investigation the Police have also recorded statements of the persons in whose names the money orders are booked. They have expressed ignorance. It is also true that in fact the money has not been transferred to those persons. However, the investigation papers discloses that

the postal machinery has been used for transferring the government money to the tune of Rs. 23 lakhs. It is very well true that if this could have been a genuine transaction, the concerned persons who have booked the money orders must have deposited the amount in the Post Department. If it is not genuine transaction the question of depositing Rs. 23 Lakh in the Post Office does not arise. It is not clear whether the Mahagaon Post Office was having cash of Rs.23 lakhs in the intervening night.

9. It is very well true that in the letter given by the applicant on 30-03-2020, he has requested the Superintendent of Post to stop all the transfers of money as it is wrongly booked. Section 409 of the IPC lays down different modes of criminal breach of trust. Violating the direction of trust is also one of the mode of committing criminal breach of trust.

10. Now, whether the applicant has only committed negligence in allowing Shri Nile to stay in the office or whether the applicant was having a criminal intention, cannot be made known unless the investigation will be carried out. It is no doubt true that the money is not transferred, there is no loss of the Postal Department. But after the preliminary enquiry, the Postal Department has found the applicant responsible and that is why FIR is lodged.

11. A question may arise whether an opportunity of custodial interrogation needs to be given to the Police to collect the material if it is not there one may say so. However it is not acceptable. The reason is during the

preliminary enquiry the applicant is held responsible. It is pertinent to note that the said Shri Nile informed to this applicant to arrange for the money. It is by way of text message. So, what really transpired in between the applicant and said Shri Nile can be unearthed only by interrogating the applicant.

12. So I do not think that the applicant will succeed in getting a discretionary relief from this Court. I think the Police need to be given an opportunity to interrogate with the applicant. Hence, the application is rejected.

13. As the main application is disposed of finally, Criminal Application (APPP) No.913/2021 has become infructuous. Hence, it is disposed of as infructuous.

JUDGE

Deshmukh